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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 603

KENNETH D. ENGLAND and CONNIE J. ENGLAND,
Petitioners,

v.

UNITED STATES OF AMERICA, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF MANUFACTURING CHEMISTS' ASSOCIATION, INC., AS AMICUS CURIAE, IN SUPPORT OF PETITION

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BRIEF OF MANUFACTURING CHEMISTS' ASSOCIATION, INC., AS AMICUS CURIAE

The Manufacturing Chemists' Association, Inc., appearing as *amicus curiae*, files this brief in support of petitioners. This brief is filed pursuant to Rule 42 of the REVISED RULES of the Supreme Court of the United States. Both counsel for petitioners and counsel for respondent have stated that the respective parties consent to the filing of this brief.

INTEREST OF AMICUS CURIAE

The Manufacturing Chemists' Association is incorporated under the laws of the State of New York. It is a nonprofit membership corporation (New York) with 193 U.S. member corporations, large and small, which account for more than 90 percent of the productive capacity of the chemical industry in this country. Its by-laws require that eligible members shall be manufacturers of chemicals who sell to others a substantial portion of the chemicals they produce. The industry carries on its activities throughout the United States and in foreign countries.

All members of the Association are vitally interested in the issue involved herein, namely:

> "Whether an employee who is transferred to a new job location by and at the direction of his employer must include in gross income amounts received from his employer in reimbursement for extraordinary moving expenses necessarily incurred by the employee solely as a result of his job transfer. Alternatively, if the employee must include such reimbursed expenses in gross income, whether the employee is entitled to deduct such expenses as ordinary and necessary business expenses."

The question presented in this case deeply concerns the industry for the answer to it will have important consequences on future policies of its members with respect to relocation of its employees. Many thousands of employees of member companies are transferred during a calendar year and it is to be anticipated that the number of transfers will progressively increase. The membership of the Association is disturbed over

the results which will stem from the decision of the Seventh Circuit Court of Appeals. Whenever an employer relocates an employee financial hardships are sustained by the employee and reimbursements are made by the employer in order to protect the employee against these financial losses. By reaching the decision that these reimbursements are neither excludable from the gross income of the employee, nor deductible by him, the Seventh Circuit Court of Appeals takes away from the employee in taxes a substantial portion of the reimbursement and thereby prevents him from being made completely whole.

ARGUMENT

This Association endorses the arguments set forth in the Brief of the Petitioner. The Association wishes to emphasize the current inconsistent position of the Internal Revenue Service in its treatment of reimbursed expenses to employees required to relocate by their employers. Thus, certain reimbursements of moving expenses do not constitute compensation and are, therefore, excludable from gross income while others, regardless of any standard of reasonableness, are arbitrarily considered compensation.[1] There are many types of expenditures necessarily incurred in connection with transfers which are for the convenience of the employer, and they should all be treated similarly for tax purposes. Therefore, to the extent these expenditures are reasonable in amount, they should not, upon reimbursement, be considered compensation to the employee.

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[1] Rev. Rul. 54-429, 1954-2 C.B. 53; Rev. Rul. 65-158, IRB 1965-24, 6.

CONCLUSION

It is respectfully submitted that the issues presented are of extreme public importance so as to make it necessary for this Court to take jurisdiction.

Respectfully submitted,

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Dated: October 8, 1965

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Brief of the National Association of Manufacturers of The United States of America, as Amicus Curiae, In Support of Petitioners on Writ of Certiorari To the United States Court of Appeals For the Seventh Circuit

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Letter from John W. Macy, Jr., Chairman of the United States Civil Service Commission, to the Honorable John W. McCormack, Speaker of the House of Representatives, dated May 20, 1965. See Hearings on H.R. 10607 cited above at Page 5 4

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With consent of the parties, the National Association of Manufacturers of the United States of America respectfully submits this brief, in accordance with Rule 42 of the Revised Rules of the Supreme Court of the United States, as *amicus curiae,* in support of the Petitioner.